

June 12, 2000

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2377**
Proposed Ordinance No. **2000-0235**

PATRICIA A. DONLIN
Petition For Road Vacation

Road Location: Portions of Northeast 117th and 88th Avenue Northeast
located in the Juanita area west of the City of Kirkland.

Petitioner: **Patricia A. Donlin**
8802 Northeast 117th Place
Kirkland, WA 98034

Interested Persons: Finn Hill Homeowners Association, *represented by*
Mark Schoenhals, 11910 – 87th Place NE, Kirkland, WA 98034

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation
Department's Final:	Approve road vacation
Examiner:	Approve road vacation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item No. V-2377 was received by the Examiner on May 3, 2000.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on Item No. V-2377 was opened by the Examiner at 9:40 a.m., Monday,

May 8, 2000, in the Fifth Floor Conference Room, Union Bank Of California Building, 900 Fourth Avenue, Seattle, Washington, and adjourned at 11:30 a.m. The hearing record was administratively continued for the following reasons:

- Receipt of Exhibit No. 23 (Affidavit of Publication). The affidavit was received on May 17, 2000.
- To obtain a sensitive areas (KCC 21A.24) identification inspection of the right-of-way of concern from the Department of Development and Environmental Services (DDES). The inspection results were never received.
- To obtain from DDES a recommendation as to whether a sensitive areas notice should be filed for record in the manner contemplated by KCC 21A.24.170 as a condition of right-of-way vacation approval. The recommendation was never received.
- To obtain a response from the King County Department of Transportation describing the Department's probable response to a petition to vacate right-of-way that conflicts with an existing lease of that same right-of-way. The response was received on May 31, 2000.
- To allow written responses from Petitioner Donlin and Finn Hill Meadows representative Schoenhals. The Examiner's continuance order provided parties ten days following the Department of Transportation's May 31 memorandum to respond. No written responses were received.

The hearing record closed on 12, 2000, twelve days following KDOT's written response to the Examiner's notice of continuance. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- drainage
- access
- fence
- sensitive areas protection

SUMMARY:

Approves vacation of portions of Northeast 117th and 88th Avenue Northeast, located in the Juanita area west of the city of Kirkland.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location: Portions of Northeast 117th and 88th Avenue Northeast located in the Juanita area west of the City of Kirkland.

Right of way classification: "A" Class and "C" Class

Area:	Parcel A	"A" Class	9,350 Square Feet
	Parcel B	"C" Class	654 Square Feet

	Parcel A	Parcel B	
Compensation:	<u>A Class</u>	<u>C Class</u>	<u>Total</u>
	\$52,640.50	\$1,841.01	\$54,481.51

2. Except as provided below, the Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the May 8, 2000, public hearing and the statement of facts contained in Proposed Ordinance No. 2000-0235. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Metropolitan King County Council.

3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.

4. The Finn Hill Meadows Homeowners Association owns pasture and open space that abuts the west boundary of the 88th Avenue Northeast right-of-way proposed to be vacated. The Association opposes the right-of-way vacation petition as it is presently constituted. Issues raised in this review, as a result of Association participation, include these:

A. The Association leases a substantial portion of the undeveloped 88th Avenue Northeast right-of-way located immediately north of that portion that is the subject of this petition. The Association expresses a concern that granting the Donlin petition will establish a precedent that will authorize and encourage other lot owners along the east boundary of the 88th Avenue Northeast undeveloped right-of-way to do the same thing. The purpose of the Association lease is to provide for convenient movement of horses between the Association's pastures. Obviously, if other property owners north of Donlin are given the same permission to acquire right-of-way (as now petitioned by Donlin), the horse trail will be interrupted and rendered non-functional. In consideration of this argument, the Examiner requested the Department to develop a position regarding its "probable response to a petition to vacate right-of-way that conflicts with an existing lease of that same right-of-way."

B. A small stream and (possibly) an associated wetland are located within the 88th Avenue Northeast right-of-way area that is the subject of this petition. KCC 21A.24.170 provides a mechanism whereby a sensitive areas notice may be filed for record in order to protect future buyers, lenders, and the general public. However, KCC 21A.24.170 does not specifically refer to right-of-way vacation approvals. For this reason, the

Examiner directed the Department to obtain a recommendation from the Department of Development and Environmental Services (DDES) regarding whether recording such a sensitive areas notice should be required as a condition of right-of-way approval. That recommendation was never received.

- C. Neighboring property owner Colon has sought in the past to obtain a drainage easement across the existing Donlin property without success. Mr. Colon expresses concern that approval of the Donlin petition to vacate 88th Avenue Northeast right-of-way will complicate, if not wholly obstruct, his efforts to obtain a downstream drainage easement. The hearing record is insufficiently detailed to determine whether other easement routes are available (through, for instance, the Finn Hill Meadows property). Nor is the hearing record sufficiently detailed to determine whether a drainage route is feasible through the 88th Avenue Northeast right-of-way. Such a route might be problematic due to topography or due to the presence of KCC 21A.24 regulated sensitive areas.
 - D. The Association concedes that its fence along the west boundary of the petitioned 88th Avenue Northeast right-of-way probably encroaches upon/within that right-of-way. The Department correctly observes that such encroachment does not grant the Association any right to use the right-of-way in that location due to adverse possession, prescriptive right, or any other legal mechanism. Nor, obviously, does it grant the Association any right to continued use. However, due to the uncertainty of the on-the-ground location of the true west boundary of 88th Avenue Northeast undeveloped right-of-way, petitioner Donlin probably would have to conduct a survey of the area petitioned for vacation before requiring the fence to be moved. Association members argue that a survey should be required before approving the petition.
5. In its May 31, 2000 memorandum to the Examiner, responding to the Examiner's notice of continuance, King County Department of Transportation declares its policy with respect to future road vacation requests within this right-of-way:

You requested Road Service Division's probable response to a petition to vacate right-of-way that conflicts with an existing lease of that same right-of-way. If a petition were filed under those circumstances the conflict would be resolved in the review process by the Road Services Division. RSD would require that the conflict be resolved between the petitioner, the Leasee and the Lessor prior to any recommendation being submitted. In most cases lease of public right-of-way is a private contract matter with defined termination and/or renewal clauses. If RSD determines that it would be in the public's best interest and that the public would benefit by the subject right-of-way being vacated, the RSD would make that recommendation. A lease agreement would be addressed in the vacation review and based on the terms and conditions of the agreement.

CONCLUSIONS:

1. The road subject to this petition is useless as part of the King County road system, and the public will be benefited by its vacation.

2. The Notice of Hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
3. The compensation required by law to be paid as a condition precedent to the vacation of this road has been deposited with King County, and the easements, if any, necessary for the construction, repair and maintenance of public utilities and services have been provided in form satisfactory to the affected public utilities.
4. Concerning sensitive areas (SA) on the property, the information in the hearing record is inconclusive. Likewise, in this hearing record, DDES policy is unconfirmed regarding the recording of notice on title for lot boundary changes due to right-of-way acquisition. However, DDES has recommended approval of the right-of-way vacation without requiring the recording of such a notice. No special sensitive area protection conditions may be applied under such circumstances.
5. In the absence of a policy requiring boundary disputes to be resolved prior to transfer, no special condition requiring resolution of the fencing issue will be recommended. Neither Mrs. Donlin nor KCDOT is exactly sure of the on-the-ground boundaries of the land to be transferred. Neither Mrs. Donlin nor KCDOT objects, however. Is the Finn Hill fence encroaching on County right-of-way? Maybe. KCDOT seems unconcerned. Following transfer of the right-of-way, will the fence encroach on Donlin property? Maybe. That is a matter to be resolved between Finn Hill Meadows and Mrs. Donlin.
6. Mrs. Donlin is regrettably uncooperative with respect to resolving Mr. Colon's drainage problem. However, she is under no obligation to do so as a condition of this right-of-way ownership transfer.
7. The transfer of a portion of this right-of-way to private ownership will not set a precedent for the remainder of the right-of-way. See Finding No. 5, above.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2000-0235 to vacate the subject road.

RECOMMENDED this 12th day of June, 2000.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 12th day of June, 2000, to the following parties and interested persons:

AT & T Cable Services
14870 NE 95th Street
Redmond WA 98052

Steve Botts
Puget Sound Energy/Real Estate Dept
P.O. Box 97034/MS - OBC 11N
Bellevue WA 98009-9734

Patricia A. Donlin
8802 NE 117th Place
Kirkland WA 98034-6118

GTE Communications
Canyon Park Building "G"
22118 - 20th Avenue SE
Bothell WA 98011

Mark Schoenhals
6518 – 114th Ave. SE
Kirkland, WA 98034

Northshore Utility District
PO Box 82489
Kenmore WA 98028

Mark Colon
11910 – 87th Pl. NE
Kirkland, WA 98034

Greg Borba
DDES/LUSD
Site Plan Review Section
MS OAK-DE-0100

Tommy Burdette
King County Dept Transportation
Engineering Services Division
MS KSC-TR-0231

Don Ding
KC Department of Transportation
Transportation and System Planning
MS KSC-TR-0813

Thomas Eksten
KC Office of Open Space
MS LBP-PR-0100

Dennis Gorley
Dept of Transportation
Road Services Division
MS KSC-TR-0231

Kristen Langley
KC Transportation Department
Traffic and Planning Section
MS KSC-TR-0222

Roderick E. Matsuno
KC Dept. of Transportation
Road Maintenance Section
MS RSD-TR-0100

Ronald J. Paananen
KCDOT Road Svcs Div
County Road Engineer
MS KSC-TR-0231

Dave Preugschat
KC Property Services Division
MS ADM-CF-0500

Lydia Reynolds
King County Dept Transportation
Manager/Project Support
MS KSC-TR-0231

Faith Roland
METRO Environ Planning
Real Estate
MS KSC-NR-0600

Charlie Sundberg
Office of Cultural Resources
Landmarks & Heritage Program
MS STR-CR-0200

Joe Wilson
KC Parks & Cultural Resources
Project Manager
MS LBP-PR-0100

NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before June 26, 2000**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before July 3, 2000**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's

recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MAY 8, 2000, PUBLIC HEARING ON KING COUNTY DEPARTMENT OF TRANSPORTATION FILE NO. V-2377, DONLIN PETITION FOR ROAD VACATION.

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Patricia Donlin, Mark Schoenhals, Mark Colon, and Tommy Burdette (representing the King County Department of Transportation).

The following exhibits were offered and entered into the record on May 8, 2000:

- Exhibit No.1 Report to the Hearing Examiner for the May 8, 2000 hearing, with 15 attachments
- Exhibit No.2 Petition transmittal letter, dated May 27, 1998, to KC Department of Transportation, from Clerk of the Council
- Exhibit No.3 Letter of explanation from Patricia A. Donlin, dated May 26, 1998
- Exhibit No.4 Petition for vacation of a County road including legal descriptions of Attachment "A" and "B"
- Exhibit No.5 Receipt #00039 for filing fee
- Exhibit No.6 Copy of the plat map for Juanita Beach Camps
- Exhibit No.7 Map depicting vacation area
- Exhibit No.8 Vicinity map
- Exhibit No.9 Copy of treasurer's deed no. 36813
- Exhibit No.10 Letter from Road Services Division to petitioner explaining the road vacation process
- Exhibit No.11 Memorandum dated July 16, 1998 from PAO re: status of 88th Avenue NE
- Exhibit No.12 Memorandum dated July 24, 1998 ("Confidential Attorney-Client Privilege, Not Subject to Discovery of Disclosures")
- Exhibit No.13 Road Vacation Worksheet 2377.xls dated August 10, 1999
- Exhibit No.14 Letter, dated August 27, 1999 from the Department of Transportation, Road Services Division
- Exhibit No.15 Road Vacation Worksheet 2377.xls dated September 13, 1999 revising the amount of compensation
- Exhibit No.16 Letter dated October 4, 1999 from the KCDOT to Clerk of Council revising amount of compensation
- Exhibit No.17 Letter, dated October 15, 1999, from KCDOT, to Patricia Donlin identifying amount of compensation (with attachments)
- Exhibit No.18 Copy of cashier's check for compensation
- Exhibit No.19 Letter, dated March 28, 2000 from King County Executive to Councilmember von Reichbauer
- Exhibit No.20 Proposed ordinance no. 2000-0235
- Exhibit No.21 Notice of hearing with map attached
- Exhibit No.22 Affidavit of posting
- Exhibit No.24 Letter, dated May 2, 200, from KCDOT to petitioner

Exhibit No.25 Photos of petitioner's home and adjacent portions of proposed vacation area

Exhibit No.26 DDES GIS map, "Goat Hill: orthographic photo"

Exhibit No.27A Map of proposed vacation vicinity; area of 27B photo identified on 27A by red dot and arrow

Exhibit No.27B Photograph of portion of proposed vacation area

The following exhibit was received and entered into the record on May 17, 2000:

Exhibit No.23 Affidavit of publication

The following exhibit was received and entered into the record on May 31, 2000:

Exhibit No.28 Memorandum, dated May 31, 2000, from Ronald J. Paananen, KDOT, to R.S. Titus, Hearing Examiner